

Advisory Committee on Rules for Civil Procedure
Office of the Secretary
Supreme Court of the United States Building
Washington, D. C.

FINAL REPORT OF THE ADVISORY COMMITTEE

To the Honorable, The Chief Justice and Associate Justices of the Supreme
Court of the United States:

The members of the Advisory Committee, appointed by the Court to
prepare and submit to the Court a draft of a unified system of rules of
civil procedure for the United States district courts, herewith submit their
final report:

A draft of the proposed rules was printed and generally distributed
in April 1937. On November 1, 1937, the Committee met to consider sugges-
tions which had been received from the bench and bar ^{as to} ~~respecting~~ the draft of
April 1937. As the result of those suggestions and of further study of the
April draft by members of the Committee, we are recommending many changes.
These changes are set forth rule by rule in this report. Some of the changes
are in matters of substance but the greater part were made for purposes of
clarification. In ^{connection with} ~~respect to~~ some of the changes we have added notes explain-
ing the reasons for the changes. The reasons for other changes are obvious
and need no explanation. We also submit herewith a proposed set of forms.

Respectfully submitted,

November 4, 1937.

(Members' names will appear here)

5
RECOMMENDATION OF THE ADVISORY COMMITTEE FOR CHANGES IN THE PROPOSED RULES OF
CIVIL PROCEDURE AS PRINTED IN APRIL, 1937.

Rule 1.- Amend Rule 1 to read as follows:

Rule 1. Scope of Rules. These rules govern the procedure in the district courts of the United States in all suits of a civil nature whether cognizable as cases at law or in equity, with the exceptions stated in Rule 83. They shall be construed to secure the just, speedy, and inexpensive determination of every action.

Rule 4.- Amend subdivision (a) as follows:

(a) Summons: Issuance. Upon the filing of the complaint, the clerk shall forthwith issue a summons and deliver it for service to the marshal, or to a person specially appointed to serve it. Upon request of the plaintiff separate or additional summons shall issue against any defendants.

~~NOTE: Prior draft provided that summons should be issued by the clerk only on request of the plaintiff. This requires the summons to be issued forthwith. It has removed to a considerable extent any difficulty resulting, when statutes of limitations were applied, from delay from the date of filing the complaint and the issuance of the summons to an officer for service.~~

Amend
Amend subdivision (d), paragraph (1), lines 36-37, by striking out the clause "adult member of his household" and substituting therefor the words "person of suitable age and discretion then residing therein".

[Here go on rule by rule setting forth the changes that are recommended. In those cases where paragraph or rule has been extensively revised, it may be necessary to say that the rule is amended to read as follows. Where possible it is preferable to state that the rule is amended in line so-and-so by striking out certain words and adding others. The staff will have to use its own judgment as

to handling each case, bearing in mind that it will be much easier for the Court if the changes are put in the form of striking out certain words and inserting others with line reference rather than in a rewrite of the rule.

After going through the rules in this way put a caption as follows:

CHANGES RECOMMENDED IN THE ARRANGEMENT OF THE RULES

The Committee recommends that Rule 59 be placed immediately following what is now Rule 52, and then go down over the changes of arrangement in the same way, listing them.

Then put a caption -

FORMS RECOMMENDED BY THE ADVISORY COMMITTEE -

and then follow with the forms agreed upon and the notes to the forms which were agreed upon.]

Chief Justice and the Supreme Court

I have the honor to acknowledge the receipt of your letter of the 11th inst. in relation to the proposed reorganization of the Advisory Committee on Rules for Civil Procedure.

You will please notice that the X's
of the rules contained in the April 1936 Report are in
the form of recommended amendments thereto; many of
a particular rule or subdivision are numerous.
The reason for the use of this method of making
by the Advisory Committee that some of the Justice
consideration and study to the April 1936 Report and this method
laborious a consideration and study of the changes proposed
than would a complete redraft of all the rules and notes.

For the purpose of further facilitating the
amendments of the Final Report, each of the original
striking, inserting, etc., on a loose-leaf
~~green binder~~ green binder which was sent to [redacted]
few changes to correct [redacted]
~~Committee's last letter~~, [redacted]
which should be made on the [redacted]

(2) The first reason for this is that the original report caused confusion and it is believed that the original report is a separate matter after a similar report was made to the fact that the original report was a separate matter changes in some of the details of the original report.

Report, are to the following rates: -

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To FILE with certain forms proposed by the Adv. Com.
(see pages 69-79)

RECOMMENDATION OF THE ADVISORY COMMITTEE

in the chapter on the text (instead of
being shown by summary, insertion, etc.) in the case of sole assistance to the Court,

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THE DEPT. OF JUSTICE

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1 RULE 27. DEPOSITIONS BEFORE ACTION OR PENDING APPEAL.

2 (a) Before Action.

3 (1) Petition. A person who desires to perpetuate his own testimony
 4 or that of another person regarding any matter that may be cognizable in
 5 any court of the United States, shall file a verified petition in the
 6 district court of the United States in the district of the residence of
 7 any expected adverse party, entitled in his own name as petitioner, show-
 8 ing: (1) that the petitioner expects to be a party to an action cognizable
 9 in a court of the United States but is presently unable to bring it or
 10 cause it to be brought, (2) the subject matter of the expected action and
 11 his interest therein, (3) the facts which he desires to establish by the
 12 and his reasons for desiring to perpetuate it proposed testimony, (4) the names or a description of the persons he ex-
 13 pects will be adverse parties and their addresses so far as known, and
 14 (5) the names and addresses of the persons to be examined and the sub-
 15 stance of the testimony which he expects to elicit from each, and pray-
 16 ing for an order authorizing the petitioner to take the depositions of
 17 the persons to be examined named in the petition, for the purpose of per-
 18 petuating their testimony.

19 (2) Notice and Service. The petitioner shall thereafter serve a
 20 notice upon each person named in the petition as an expected adverse
 21 party, together with a copy of the petition, stating that the petitioner
 22 will apply to the court, at a time and place named therein, for the or-
 23 At least 20 days before the date of hearing der described in the petition. /The notice shall be served either within
 24 or without the district or state in the manner provided in Rule 4^(b) for
 25 such service of summons; but if ~~personal~~ service cannot with due diligence be
 26 made upon any expected adverse party named in the petition, the court
 27 may make such order as is just for service by publication or otherwise,
 28 ~~may~~ ^{shall} in the manner provided in Rule 4^(b) and ~~may~~ appoint, for persons not ~~personally~~ served, an attorney who shall

represent them, and in case they are not otherwise represented shall
29 ~~appear and~~ cross-examine the ^{deponent} ~~deponents~~. If any expected adverse party is
30 a minor or incompetent the provisions of Rule 17 (c) apply. ~~The notice~~
31 ~~shall be served a sufficient time before the date of the hearing to give~~
32 ~~all the expected adverse parties a reasonable opportunity to be present~~

33 (3) Order and Examination. If the court is satisfied that the per-
34 petuation of the testimony ^{may} ~~is proper to~~ prevent a failure or delay of
35 justice, it shall make an order designating or describing the persons whose
36 depositions may be taken and specifying the subject matter of the examina-
37 tion and whether the depositions shall be taken upon oral examination or
38 written interrogatories. The depositions may then be taken in accordance
39 with these rules. For the purpose of applying these rules to depositions
40 for perpetuating testimony, each reference therein to the court in which
41 the action is pending shall be deemed to refer to the court in which the
42 petition for such deposition was filed.

43 (4) Use of Deposition. If a deposition to perpetuate testimony is
44 taken under these rules or if, although not so taken, it would be admis-
45 sible in evidence in the courts of the state in which it is taken, it may
46 be used in any action subsequently brought involving the same subject mat-
47 ter in a district court of the United States, in accordance with the pro-
48 visions of Rule 26 (3).

49 (b) Pending Appeal. If an appeal has been taken from a judgment of a
50 district court, the district court in which the judgment was rendered may
51 allow the taking of the depositions of witnesses to perpetuate their testi-
52 mony for use in the event of further proceedings in the district court. In
53 such case the party who desires to perpetuate the testimony may make a motion
54 in the district court for leave to take the depositions, upon the same notice
55 and service thereof as if the action was pending in the district court. The
56 motion shall show (1) the names and addresses of the persons to be examined

57 and the substance of the testimony which he expects to elicit from each; (2)
58 the reasons for perpetuating their testimony. If the court finds that the
59 perpetuation of the testimony is proper to avoid a failure or delay of jus-
60 tice, it may make an order allowing the depositions to be taken, and thereupon
61 the depositions may be taken and used in the same manner and under the same
62 conditions as are prescribed in these rules for depositions taken in actions
63 pending in the district court.

(c) Perpetuation by Action. This rule does not limit the power of a court
to entertain an action to perpetuate testimony.

FILE Drafts - Final Report

SEE ALSO

FILE Judges (U.S.) and Their Committees -
9th Circuit - Wash. (W)

DOCUMENT letter

DATE December 1, 1937

FROM Charles S. Albert

TO Secretary, Advisory Committee

Other Identification